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JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS SHANE D. MOSLEY, SR.		DEFENDANTS VICTOR CONTE
(b) County of Residence of First Listed Plaintiff Clark County (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Kim O. Dincel, Long & Levit LLP Judd Burstein, Judd Burstein, P.C. 465 California Street 5th Floor 1790 Broadway, Suite 1501 San Francisco, CA 94104 New York, NY 10019 Tel: (415) 397-2222 Tel: (212) 974-2400		Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|--|---|----------------------------|----------------------------|
| PTF | DEF | PTF | DEF |
| Citizen of This State <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Action for Slander, Libel, Permanent Injunction

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ excess of 75,000.00 CHECK YES only if demanded in complaint:
UNDER F.R.C.P. 23 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

04-02-08

SIGNATURE OF ATTORNEY OF RECORD



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CLERK-2 PM 3:50
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JUDGE, U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA
MOSLEY

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SHANE D. MOSLEY, SR.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BZ

SHANE D. MOSLEY, SR.,

Plaintiff,

vs.

VICTOR CONTE,

Defendant.

CV 08

Case No:

1777

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- 1) DEFAMATION, SLANDER
- 2) DEFAMATION, SLANDER
- 3) DEFAMATION, LIBEL
- 4) PERMANENT INJUNCTION

DEMAND FOR JURY TRIAL

Plaintiff SHANE D. MOSLEY SR. ("Plaintiff" or "Mosley"), by his attorneys, Judd Burstein, P.C. ("JBPC") and Long & Levit LLP, as and for his complaint against Defendant VICTOR CONTE ("Defendant" or "Conte"), alleges as follows:

I.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332, in that it is a civil action between citizens of different States, and involves an amount in controversy in excess of \$75,000.

2. Venue is proper in this District pursuant 28 U.S.C. § 1391(a)(1).

II.

INTRADISTRICT ASSIGNMENT

3. Pursuant to Civil L.R. 3-2(c) and (d), this action arose due to actions and omissions of Defendant that took place, in substantial part, in San Francisco and/or San Mateo Counties. Therefore, this case should be assigned to either the San Francisco Division or the Oakland Division.

III.

THE PARTIES

4. Plaintiff Mosley, a legendary professional boxer, is a citizen of the State of Nevada.

5. Defendant, a convicted felon and purveyor of illegal performance enhancing drugs and procedures, is a citizen of the State of California.

IV.

GENERAL ALLEGATIONS

6. In or about July of 2003, Mosley's conditioning coach, Darryl Hudson ("Hudson"), brought Mosley to meet with Conte at Conte's business, Bay Area Laboratory Co-

operative ("Balco"). Mosley was informed by Hudson that Conte's company sold entirely legal supplements, including some that were sold on the Internet, which would aid his training.

7. At the meeting with Conte, samples of Mosley's blood were taken and analyzed. Conte then recommended to Mosley a regimen of products that Mosley was told would help him with his endurance. At no time during this meeting did Mosley use any of the products recommended to him. Always extremely concerned about his health and with playing by the rules, Mosley specifically asked Conte whether the items recommended by Conte were healthy, legal and permitted for athletes. Mosley was specifically told by Conte that there was nothing wrong with following Conte's recommendations, and that all of the products recommended by Conte were entirely legal and appropriate.

8. In July 2005, Conte pleaded guilty to a conspiracy to distribute steroids.

9. In October 2005, Conte was sentenced to four months imprisonment and four months house arrest.

10. On or about March 30, 2008, Conte began publicizing the fact that he was going to publish a book about his life as a peddler of steroids. As part of this publicity campaign to maximize sales of his future book, Conte made knowingly false claims about Mosley's use of Balco products.

V.

FIRST CLAIM FOR RELIEF

SLANDER

11. Plaintiff repeats and realleges the allegations set forth above in all of the prior Paragraphs as if fully and completely set forth herein.

1 12. On or about March 29, 2008, Conte gave an interview to New York Daily News
2 Reporters Nathaniel Vinton and/or Teri Thompson, in which Defendant falsely stated that he
3 “watched [Mosley] inject [himself] in front of me,” that Mosley “knew precisely what [he was]
4 using,” and that, notwithstanding Mosley’s prior public claim that Conte had misled Mosley
5 about the legality of the products provided by Conte, “[i]t was all explained up front and there
6 was no deception.”

7
8 13. On March 30, 2008, an article containing Conte’s false statements was published
9 in the New York Daily News (the “March 30 Article”). A true and complete copy of the March
10 30 Article is annexed hereto as Exhibit A and incorporated by reference herein.

11
12 14. The statements made by Conte set forth above in Paragraphs 12 and 13 were
13 false.

14
15 15. The statements set forth above in Paragraphs 12 and 13 were made by Conte with
16 knowledge of their falsity.

17 16. Conte’s statements set forth above in Paragraphs 12 and 13 were unprivileged.

18 17. Conte intended the statements set forth above in Paragraphs 12 and 13 to appear
19 in the March 30 Article, and with the purpose of increasing sales of Defendant’s intended book
20 by besmirching Mosley’s good name and trading on Plaintiff’s fame and reputation.

21
22 18. Conte’s statements set forth above in Paragraphs 12 and 13 accuse Plaintiff of
23 criminal conduct.

24 19. Conte’s statements set forth above in Paragraphs 12 and 13 tend to injure Mosley
25 in his profession as a prize fighter, both in that they impute to Mosley a general disqualification
26 in the respect which a professional boxer peculiarly requires, and impute traits concerning
27 professional prize fighting that lessen Mosley’s ability to earn money in that profession.
28

20. The natural consequence of Conte's statements set forth above in Paragraphs 12 and 13 is to cause actual damage to Mosley.

21. Based upon the foregoing slander, Defendant is liable to Plaintiff in an amount to be determined at trial.

22. Conte's knowingly false statements about Mosley set forth above in Paragraphs 12 and 13 were intended as advance publicity designed to increase sales for Conte's planned book. Conte's slander was intended to cause injury to Mosley and was carried out by Defendant with a willful and conscious disregard for Mosley's rights. In publishing knowingly false statements about Mosley in order to increase sales of his intended book, Conte engaged in despicable conduct subjecting Mosley to cruel and unjust hardship, which was done in conscious disregard of Mosley's rights. Accordingly, Plaintiff is also entitled to punitive damages in an amount to be determined at trial.

VI.

SECOND CLAIM FOR RELIEF

SLANDER

23. Plaintiff repeats and realleges the allegations set forth above in all of the prior Paragraphs as if fully and completely set forth herein.

24. On or about March 29, 2008, Conte gave a telephone interview (from, on information and belief, San Francisco) to USA Today reporter A. J. Perez ("Perez"). On information and belief, Defendant made false statements to Perez which were substantially identical to the false statements detailed above in Paragraphs 12 and 13.

25. The statements described above in Paragraph 24 were made by Conte with knowledge of their falsity.

1 26. Conte's statements described above in Paragraph 24 were unprivileged.

2 27. Conte intended the statements described above in Paragraph 24 to appear in USA
3 Today with the purpose of increasing sales of Defendant's intended book by besmirching
4 Mosley's good name and trading on Plaintiff's fame and reputation.
5

6 28. Conte's statements described above in Paragraph 24 accuse Plaintiff of criminal
7 conduct.

8 29. Conte's statements described above in Paragraph 24 tend to injure Mosley in his
9 profession as a prize fighter, both in that they impute to Mosley a general disqualification in the
10 respect which a professional boxer peculiarly requires, and impute traits concerning professional
11 prize fighting that lessen Mosley's ability to earn money in that profession.
12

13 30. The natural consequence of Conte's statements described above in Paragraph 24
14 is to cause actual damage to Mosley.
15

16 31. Based upon the foregoing slander, Defendant is liable to Plaintiff in an amount to
17 be determined at trial.

18 32. Conte's knowingly false statements about Mosley as described above in
19 Paragraph 24 were intended as advance publicity designed to increase sales for Conte's planned
20 book. Conte's slander was intended to cause injury to Mosley and was carried out by Defendant
21 with a willful and conscious disregard for Mosley's rights. In publishing knowingly false
22 statements about Mosley in order to increase sales of his intended book, Conte engaged in
23 despicable conduct subjecting Mosley to cruel and unjust hardship, which was done in conscious
24 disregard of Mosley's rights. Accordingly, Plaintiff is also entitled to punitive damages in an
25 amount to be determined at trial.
26
27
28

VII.

THIRD CLAIM FOR RELIEF

LIBEL

33. Plaintiff repeats and realleges the allegations set forth above in all of the prior Paragraphs as if fully and completely set forth herein.

34. On information and belief, in September of 2007, Conte sent an e-mail to a reporter affiliated with SI.com in which Defendant falsely stated, in words and substance, that he had explained to Mosley that he (Conte) was providing him with illegal steroids and performance enhancing substances.

35. The statement set forth above in Paragraph 34 was made by Conte with knowledge of its falsity.

36. Conte's statement set forth above in Paragraph 34 was unprivileged.

37. On information and belief, Conte intended the statement set forth above in Paragraph 34 to appear on the SI.com website for the purpose of increasing sales of Defendant's intended book by besmirching Mosley's good name and trading on Plaintiff's fame and reputation.

38. Conte's statement set forth above in Paragraph 34 exposed Mosley to hatred, contempt, ridicule, or obloquy, and had a tendency to injure him in his occupation.

39. Conte's statement set forth above in Paragraph 34 is defamatory without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact.

40. The natural consequence of Conte's statement set forth above in Paragraph 34 is to cause actual damage to Mosley.

1 47. Mosley is entitled to a permanent injunction barring Conte from defaming Mosley
2 by making, orally or in written form, any of the statements complained of in Paragraphs 12, 13,
3 24 and 34 above.
4

5 **IX.**

6 **DEMAND FOR JURY TRIAL**

7 48. Plaintiff hereby demands a jury trial for all claims other than his claim for a
8 permanent injunction.
9

10 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

11 A. On his First, Second, and Third Claims for Relief:

12 1. Compensatory damages according to proof at trial, but in excess of \$75,000.

13 2. Punitive damages in an amount to be determined at trial.

14 B. On his Fourth Claim for Relief:

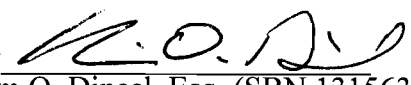
15 1. A permanent injunction barring Conte from defaming Mosley by making, orally
16 or in written form, any of the statements complained of in Paragraphs 12, 13, 24 and 34 above.
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1 C. Costs of suit and for such other and further relief as the court deems just and proper.

2 Dated: San Francisco, California.

3 April 2, 2008

4 LONG & LEVIT LLP

5
6 By 
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In face of athletes' denials, Victor Conte points to calendars

BY TERI THOMPSON IN NEW YORK AND NATHANIEL VINTON IN SAN FRANCISCO
DAILY NEWS SPORTS WRITERS

Sunday, March 30th 2008, 8:57 PM

SAN FRANCISCO - Three of the athletes who worked with Victor Conte at BALCO - boxer Shane Mosley and sprinters Kelli White and Tim Montgomery - have denied at one time or another that they knew they were taking banned or illegal substances provided by Conte.

But Conte, who says he will discuss all three in his new book, "BALCO: The Straight dope on Steroids, Barry Bonds, Marion Jones and What We Can Do To Save Sports," says they "all knew precisely what they were using.

"I taught them how to use substances, including "the clear," and inject themselves with EPO. I watched them inject themselves in front of me."

"The clear" was an undetectable steroid applied by placing drops of the yellowish liquid under the tongue with a needleless syringe; EPO is a banned performance-enhancer that is injected by needle.

Mosley, who is scheduled to fight welterweight Zab Judah on May 31 at Mandalay Bay in Las Vegas, told the Daily News in September that he inadvertently took two designer steroids - "the cream" and "the clear" - before his championship fight against Oscar De La Hoya in 2003 after he says he was misled by Conte, who disputed the claims then in an e-mail response. SI.com first reported that investigator Jeff Novitzky had said at an anti-doping conference in Colorado Springs that Mosley had used the substances.

"Those are simply lies," Conte told The News again Sunday of Mosley's statements. "It was all explained up front and there was no deception."

Conte says he has detailed doping calendars of all three athletes, including Mosley's. "I have every day and every dose," he says.

White has claimed that Conte told her he was giving her flaxseed oil and Montgomery told the BALCO grand jury that Conte assured him "the clear" was not an illegal steroid.

"Not true," Conte says.